

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1459 of 1999

in

SPECIAL CIVIL APPLICATION No 8240 of 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ANIL P UDANI

Versus

PRAVINCHANDRA HIMMATLAL OZA

Appearance:

MR RC KAKKAD for Appellant
NOTICE SERVED BY DS for Respondent No. 3, 4, 5
Mr.Joshi Asst.Govt.Pleader for State

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: 04/11/1999

ORAL JUDGEMENT

1. Admitted. Mr.Jayant Patel, Learned Advocate

appears and waives service of notice of admission on behalf of original petitioners and Mr. Joshi, Learned AGP appears and waives service of notice of admission on behalf of respondents. In the facts and circumstances, matter is taken up for final hearing today.

2. This appeal is filed against the interim order passed by the learned Single Judge in Special Civil Application No. 8240 of 1999 on October 20, 1999. The said order reads as under:

"Notice returnable on 18.11.1999. In view of the statement being made by the petitioner that the Principal of the School has already signed the bills and sent the same to the District Education Officer and that such bills are required to be considered by the DEO and in view of the statement made on behalf of the petitioner that the teaching as well as non-teaching staff in question was appointed before the disputes arose between the trustees, until further orders there shall be ad-interim relief in terms of para 8(C). The DEO shall consider the pay bills as per the disburse the payment of the salary to the teaching as well as non-teaching staff of Sharda Mandir Primary School, Junagadh on or before 2.11.1999. DS is permitted.'

3. It is not disputed by and between the parties that notice which is made returnable on November 18, 1999 is yet to come. The matter is still not admitted and hearing will take place on that date. The appellant being aggrieved by the interim order has approached this court and we have issued notice on 26.11.1999. It is strenuously argued by the learned Advocate for appellant that the learned Single Judge ought not to have granted interim relief which is in a mandatory nature directing the DEO to consider the pay bills of the teachers and disburse payment of salary to the teaching and non-teaching staff of Sharda Mandir Primary School, Junagadh on or before 2.11.1999. In view of mandatory nature we have issued notice and granted interim relief. Today we have heard learned advocates parties.

4. It appears that there is some dispute between trustees. The grievance of Mr. Kakkad was that ex parte ad-interim order of mandatory nature was passed, and that too relying on the statement made by the learned advocate for petitioner that "teaching and non-teaching staff in

question was appointed before the dispute arose between the trustees". He submitted that the above statement made on behalf of petitioners was not correct. In view of the fact, however, that the main matter is still not admitted and notice is made returnable on 18.11.1999, in our opinion, it would be in the interest of justice if during the intervening period the staff members are paid salary as per the order passed by the learned Single Judge. It is stated at the time of hearing by learned Asst. Government Pleader that out of 19 teachers 6 teachers are surplus. The payment which would be made to the staff including surplus teachers will be subject to final outcome of Special Civil Application as also subject to further orders to be passed by the learned Single Judge.

5. In the above of the matter, without expressing any opinion on merits and without prejudice to the rights and contentions of the parties, Letters Patent Appeal deserves to be disposed of and is accordingly disposed of. In view of Diwali, disbursement of payment of salary to staff be made as early as possible. Letters Patent Appeal is disposed of accordingly. Notice is discharged. No order as to costs.

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